

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
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Valerie DE LA POTERIE et al.)	Group Art Unit: 1619
)	
Patent No.: 7,887,788 B2)	Examiner: Jyothsna A. VENKAT
)	
Issued: February 15, 2011)	Confirmation No.: 6821
)	
For: COSMETIC COMPOSITION)	<i>Via EFS-WEB</i>
COMPRISING A TACKY WAX)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT-POST GRANT

In accordance with 37 C.F.R. § 1.705(b), Applicants hereby apply for patent term adjustment under 35 U.S.C. § 154(b) of 1420 days. This application is being filed within two months of issuance of the above patent, as required by 37 C.F.R. § 1.705(d), and is accompanied by \$200.00 to cover the fee required by 37 C.F.R. § 1.705(b)(1).

I. Statement of the Facts Involved

A. Correct Patent Term Adjustment

According to information printed on the face of the above-identified issued patent, this patent is entitled to 1378 days of patent term adjustment.

However, Applicants have calculated a patent term adjustment of 1420 days based on the following facts:

The patent application was filed on September 5, 2003. On November 26, 2003, a Notice to File Missing Parts was mailed. A Response to the Notice was filed on March 26, 2004, resulting in Applicants' delay of 29 days.

A Restriction/Election Requirement was mailed on December 14, 2006. This resulted in a PTO delay of 769 days, as calculated from 14 months after the filing date of the patent application.

A response to the first Office Action was filed on January 11, 2007. A Notice of Non-Compliant Amendment was mailed on March 30, 2007. A response to the Notice was filed on July 30, 2007. This resulted in Applicants' delay of 200 days, as calculated by the number of days between the first response (filed January 11, 2007) to the second response (filed July 30, 2007).

A non-final Office Action was mailed on February 26, 2008, resulting in a PTO delay of 88 days as calculated from the date of the July 30, 2007, filing.

A response to the non-final Office Action was filed on May 21, 2008. A final Office Action was mailed on August 27, 2008, and a response to that Action was filed November 3, 2008. The Examiner withdrew the finality of the previous Office Action and issued a new non-final Office Action on December 3, 2008. A response was filed on January 26, 2009, and a new final Office Action was mailed on May 8, 2009. Subsequently, an Amendment and Request for Continued Examination were filed on August 10, 2009. This resulted in Applicants' delay of 2 days.

After the RCE was filed, a non-final Office Action was mailed on November 9, 2009. A Notice of Appeal was then filed on May 7, 2010, resulting in Applicants' delay of 87 days.

An Amendment with RCE was subsequently filed on August 6, 2010. A Notice of Allowance was mailed on October 18, 2010. The issue fee was paid on January 6, 2011. With the issue fee, Applicants filed a Comments on Statement of Reasons for Allowance. Applicants note that the PTO has classified the Comments as an "Amendment after Notice of Allowance" and thus calculated a delay of 42 days on the part of Applicants. Applicants respectfully submit that this is in error and, thus, there should be no delay associated with the filing.

The patent then issued on February 15, 2011.

With respect to the three year pendency, Applicants note that the three year pendency expired on September 5, 2006. The first RCE was filed on August 10, 2009, resulting in a PTO delay of 1069 days ("B" delay).

As such, total Applicants' delay is 318 days. The PTO delay is 857 days (769 + 88 days, "A" delay) plus 1069 days ("B" delay) - i.e., 1926 days total. There is an overlap of 188 days between the "A" delays and "B" delays. Thus, the total PTO delay is 1738 days.

Thus, the total adjustment is 1420 days (1738 days of PTO delay minus 318 days of Applicants' delay).

Accordingly, Applicant respectfully requests that the current patent term adjustment be reconsidered.

B. Terminal Disclaimer

The above-identified application is subject to a Terminal Disclaimer in which the term of this application has been disclaimed, except as provided in the Terminal Disclaimer, beyond the expiration date of the fully statutory term defined in 35 U.S.C.

§§ 154 to 156 and 173, as presently shortened by any terminal disclaimer, of the following:

- U.S. Patent Application No. 10/654,887;
- U.S. Patent Application No. 10/656,201; and
- U.S. Patent Application No. 11/056,239 (now U.S. Patent No. 7,820,151).

C. Reasonable Efforts

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704.

II. Fee

As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by \$200.00 to cover the required fee. Please charge any deficiencies to Deposit Account No. 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: April 12, 2011

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